Henry Cauthorne, an Individual, t/a Cauthorne Trucking[1] ***and*** **Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 5-CA-10344

June 19, 1981

DECISION AND ORDER

On June 12, 1980, Administrative Law Judge John M. Dyer issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, only to the extent consistent herewith.

The Administrative Law Judge found that Respondent did not violate Section 8(a)(5) of the Act by unilaterally ceasing payments into the Union's health and welfare fund and pension fund as alleged in the complaint. He therefore recommended that the complaint be dismissed in its entirety. We disagree.

The facts are not in dispute. Cauthorne testified that in late 1971 or early 1972 he signed a collective-bargaining agreement with the Union and that at the time he did not know whether his employees supported the Union. At the same time, he also signed union health and welfare fund and pension fund trust agreements and began making payments into these funds on behalf of his employees. In February 1973, Cauthorne signed another collective-bargaining agreement, which had been negotiated by the Union and the Construction Contractors Council, Inc. (CCC), and which was effective May 1, 1972, to April 30, 1975. In addition, he executed another set of trust fund agreements.

In July 1975, prior to the completion of negotiations between the Union and CCC on a new contract, Cauthorne, at the Union's request, signed an interim agreement whereby he agreed to the terms of 11 articles which had been proposed by the Union as part of its contract with CCC. Subsequently, CCC and the Union agreed on a contract effective August 1, 1975, through July 31, 1978. Cauthorne did not execute this final CCC contract. He continued, however, to make payments into the trust funds for his employees, including the periodic increases required by the CCC contract. During the 1975-78 contract period, Cauthorne also dealt with the Union with regard to grievances. At no time during the 1975-78 contract period did Cauthorne assert to the Union that he was not bound by the CCC contract.

In the summer of 1978, Cauthorne told the Union he would not sign a "new contract." Upon the expiration of the 1975-78 contract, he unilaterally ceased making payments into the trust funds. Cauthorne did not subsequently sign another contract with the Union.

The Administrative Law Judge found that, since Cauthorne had not actually executed the 1975-78 contract between CCC and the Union, he was not obligated to make payments into the union trust funds as required by that agreement. He found, instead, that any payments made subsequent to the end of the 1973-75 contract, which Cauthorne had executed, were gratuitous and could be terminated at will. The Administrative Law Judge concluded, therefore, that Cauthorne's failure and refusal to make trust fund payments after July 31, 1978, did not violate Section 8(a)(5) and (1) of the Act.

Contrary to the Administrative Law Judge, we conclude that, although Cauthorne did not actually sign the final 1975-78 contract between CCC and the Union, he nevertheless was bound by its terms. Thus, Cauthorne executed the interim agreement proffered by the Union, he subsequently implemented a significant portion of the 1975-78 contract by making payments into the trust funds, and he dealt with the Union on grievances. Finally, Cauthorne never asserted to the Union that he was not bound by the 1975-78 contract. In our view, by these actions, Cauthorne engaged in a course of conduct which manifested an intention to adopt and to be bound by the 1975-78 contract. *Haberman Construction Company*, 236 NLRB 79, 85-86 (1978), enfd. 618 F.2d 288 (5th Cir. 1980).

Furthermore, the Board has held that health and welfare and pension fund plans which are part of an expired contract constitute an aspect of employee wages and a term and condition of employment which survives the expiration of the contract. *Harold W. Hinson, d/b/a Hen House Market No. 3*, 175 NLRB 596 (1969), enfd. 428 F.2d 133 (8th Cir. 1970). Thus, an employer may not unilaterally alter payments into such plans unless: (1) the changes are made subsequent to the parties' reaching a bargaining impasse and the union has rejected the changes prior to the impasse,[2] (2) the employer demonstrates that, at the time the changes were made, the union did not represent a majority of the

[1] The name of Respondent appears as amended at the hearing.

[2] *Allen W. Bird II, etc., and Caravelle Boat Company*, 227 NLRB 1355 (1977).

unit employees or that the employer had a good-faith doubt, based on objective considerations, of the union's continuing majority status,[3] or (3) the union has waived its right to bargain regarding the changes.[4]

Cauthorne does not contend that negotiations between him and the Union had reached an impasse when he ceased making the trust fund payments.[5] In addition, there were three consecutive contracts between Cauthorne and the Union, lawful on their face, and Cauthorne does not assert that, at the time he unilaterally ceased the payments, the Union did not represent a majority of his employees or that he entertained a good-faith doubt of the Union's continuing majority status. He does question, however, the Union's majority status by contending that the Union did not represent a majority of his employees at the time he executed the first contract with the Union in late 1971 or early 1972. Regardless of the Union's actual status at that time, this defense must fail.

Thus, it is well settled that "Section 10(b) is applicable to a refusal-to-bargain defense that the bargaining relationship was unlawfully established" by the employer's recognition of a minority union. *B. C. Hawk Chevrolet, Inc.*, 226 NLRB 527, 529 (1976), enfd. 582 F.2d 491 (9th Cir. 1978). Accordingly, as Cauthorne's asserted unlawful recognition of the Union occurred more than 6 months prior to the filing of the charge, he may not raise this defense at this late date.

Additionally, Cauthorne asserts that under the trust fund agreements his obligation to make payments into the funds depends upon the existence of a current contract between him and the Union.[6] Contrary to this assertion, the trust fund agreements merely refer to collective-bargaining agreements for the purpose of setting the amount to be paid into the fund for each covered employee. These references, by themselves, are insufficient to relieve an employer of its obligation to bargain with its employees' exclusive bargaining representative regarding changes in the employees' wages or terms and conditions of employment. Furthermore, the health and welfare fund trust agreements contain no other language which might limit an employer's obligation to bargain regarding cessation of payments into the fund. We find, therefore, that Cauthorne violated Section 8(a)(5) and (1) of the Act by ceasing such payments on behalf of his employees.[7]

The pension fund trust agreement, however, contains the following additional language:

> IT IS UNDERSTOOD AND AGREED that at the expiration of any particular collective bargaining agreement by and between the Union and any Company's obligation under this Pension Trust Agreement shall terminate unless, in a new collective bargaining agreement, such obligation shall be continued.

In our view, this language expressly waives both the employees' right to receive the benefits of pension fund contributions and the Union's right to bargain regarding an employer's cessation, at the expiration of a contract, of payments into the pension trust fund absent a renewed agreement to continue such payments. *Westinghouse Electric Corporation*, 188 NLRB 885 (1971); cf. *Wayne's Olive Knoll Farms, Inc., d/b/a Wayne's Dairy, supra* at 264–265. As Cauthorne did not agree to make such payments beyond the end of the 1975–78 contract, he was privileged, under the terms of the pension trust fund agreement, to cease payments into that fund. For this reason, we find that Cauthorne's refusal to continue payments into the Union's pension fund did not violate Section 8(a)(5).

CONCLUSIONS OF LAW

1. Henry Cauthorne, an Individual, t/a Cauthorne Trucking, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of

[3] *Rish Equipment Company*, 173 NLRB 943 (1968), enfd. 407 F.2d 1098 (4th Cir. 1969). A collective-bargaining agreement, lawful on its face, raises an irrebuttable presumption that the union's majority status continued through the end of the contract. This presumption continues beyond the expiration of the contract, but becomes rebuttable. Of course, the burden of rebutting this presumption is upon the party that would do so. *Eastern Washington Distributing Company, Inc.*, 216 NLRB 1149 (1975).

[4] *Coppus Engineering Corporation*, 195 NLRB 595 (1972) (Member Jenkins dissenting on other grounds).

[5] Cauthorne, however, does assert that the parties reached an impasse at their single meeting in January 1979. We agree with the Administrative Law Judge's characterization of this meeting as one of an "exploratory nature." On the entire record, we find that Cauthorne and the Union did not reach an impasse in those negotiations.

[6] Cauthorne also raises the related issue of whether the trust fund agreements underlying the expired contract, which we note are of indefinite duration, meet the requirements of Sec. 302(c)(5)(B) as construed in *Moglia* v. *Geoghegan*, 403 F.2d 110 (2d Cir. 1968), cert. denied 394 U.S. 919 (1969). The Board has consistently held that Sec. 302(c)(5)(B)'s requirement that trust fund payments be made pursuant to a written agreement are met by a trust fund agreement underlying an expired contract. See *Peerless Roofing Co., Ltd.*, 247 NLRB 500 (1980); *Wayne's Olive Knoll Farms, Inc. d/b/a Wayne's Dairy*, 223 NLRB 260, 264 (1976).

[7] Even assuming, *arguendo*, that Cauthorne had not adopted the 1975–78 contract, we would find that Cauthorne violated Sec. 8(a)(5) and (1) by ceasing the health and welfare payments. Thus, we note that the parties had two prior collective-bargaining agreements and that Cauthorne has not attempted to rebut the presumption of majority status which flows from these earlier contracts. Since these contracts included provisions for payments into the union trust funds, under *Harold W. Hinson, etc., supra*, Cauthorne was obligated to continue to make these payments into the Union's health and welfare fund.

America, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit is appropriate for the purposes of collective bargaining:[8]

> All truck drivers and helpers employed by Respondent at its Washington, D.C. location, but excluding all office clerical employees, guards and supervisors as defined in the Act.

4. By unilaterally ceasing payments into the Union's health and welfare trust fund upon the expiration of the 1975–78 collective-bargaining agreement between Respondent and the Union, Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

5. The above-described unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in an unfair labor practice, we shall order Respondent to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act. We shall order that Respondent make the employees whole by paying all health and welfare trust fund contributions, as provided in the expired collective-bargaining agreement, which have not been paid and which would have been paid absent Respondent's unlawful unilateral discontinuance of such payments.[9]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Henry Cauthorne, an Individual, t/a Cauthorne Trucking, Washington, D.C., his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally ceasing payments into the Union's health and welfare trust fund.

(b) In any like or related manner interfering with, restraining, or coercing his employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make his employees whole by paying all health and welfare trust fund contributions, as provided in the expired collective-bargaining agreement, which have not been paid, and which would have been paid absent Respondent's unlawful unilateral discontinuance of such payments, and continue such payments until such time as Respondent negotiates in good faith to a new agreement or to an impasse.

(b) Post at his Washington, D.C., place of business copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by him for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be, and they hereby are, dismissed.

[8] The Administrative Law Judge made no finding regarding the appropriate unit. We find that the unit alleged by the General Counsel in the complaint is an appropriate unit. In this regard, we note that such unit is consistent with that recognized by the parties in their collective-bargaining agreements and that these agreements described the bargaining unit with sufficient clarity. Furthermore, it is clear, by virtue of the parties' practice under these collective-bargaining agreements, that the parties intended to and in fact entered into a real bargaining relationship. Accordingly, we find this case distinguishable from *Ace-Doran Hauling & Rigging Co.*, 171 NLRB 645 (1968), and *Bender Ship Repair Company, Inc. and Bender Welding and Machine Company, Inc.*, 188 NLRB 615 (1971).

[9] Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for interest at a fixed rate on fund payments due as part of a "make-whole" remedy. We therefore leave to further proceedings the question of how much interest Respondent must pay into the benefit fund in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the fund at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See *Merryweather Optical Company*, 240 NLRB 1213, 1216, fn. 7 (1979).

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Jugdment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that I

have violated the National Labor Relations Act, as amended, and has ordered me to post this notice.

> I WILL NOT unilaterally cease making payments into the Union's health and welfare trust fund.
>
> I WILL NOT in any like or related manner interfere with, restrain, or coerce my employees in the exercise of the rights guaranteed them in Section 7 of the Act.
>
> I WILL make my employees whole by paying all health and welfare trust fund contributions, as provided in the expired collective-bargaining agreement, which have not been paid, and which would have been paid absent my unilateral discontinuance of such payments, and continue such payments until such time as I negotiate in good faith to a new agreement or to an impasse.

HENRY CAUTHORNE, AN INDIVIDUAL, T/A CAUTHORNE TRUCKING

DECISION

STATEMENT OF THE CASE

JOHN M. DYER, Administrative Law Judge: Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union or the Charging Party, filed a charge on December 11, 1978,[1] against Henry Cauthorne, an Individual, t/a Cauthorne Trucking, herein called Cauthorne Trucking, the Company, or Respondent, alleging that the Company had violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. The Regional Director issued a complaint on July 23, 1979, alleging violations of Section 8(a)(1) and (5) of the Act by Respondent's discontinuance of contributions to the Union's health and welfare fund. In the interim, on January 10, 1979, and apparently again on June 4, 1979, the Regional Director issued a letter or letters dismissing this charge on the basis of insufficient evidence to sustain the allegations. The dismissal or dismissals were appealed by the Union. On July 13, 1979, the Acting Regional Director revoked the dismissal or dismissals and determined that a complaint should issue alleging that Respondent unilaterally discontinued certain fringe benefit payments around September 1978 in violation of Section 8(a)(1) and (5) of the Act. On July 31, 1979, the Office of Appeals of the General Counsel issued a letter dismissing parts of the appeal and noting that, "since the Acting Regional Director has by letter of July 13, 1979, revoked the earlier June 4, 1978, Regional decision with respect to the . . . 8(a)(5) allegation concerning the Employer's discontinuance of certain fringe benefit payments [health and welfare fund] established in the prior contract, further proceedings on appeal with respect thereto were no longer warranted."

At the hearing in this matter, over the objection of Respondent,[2] the complaint was amended to allow as additional violations of Section 8(a)(1) and (5) that Respondent had ceased payments to the Union's employee pension fund.

Respondent's timely answer admitted the service and jurisdictional allegations and the status of the Union and noted that it had ceased the payments, but denied that it had violated the Act in any manner.

All parties were afforded full opportunity to appear, to examine and cross-examine witnesses, and to argue orally at the hearing held in Washington, D.C., on January 7 and February 11, 1980. Respondent and the General Counsel filed briefs which have been carefully considered. The principal question in this case is whether Respondent was bound to continue to make contributions to health and welfare and pension funds after July 31, 1978. The answer to this question is determined by whether there was a contract between the Union and Cauthorne Trucking from 1975 through 1978. Under all the facts and testimony in this case, the answer to this latter question is that there was no such contract and therefore the first question must also be answered in the negative. Accordingly, this complaint and charge will be dismissed.

On the entire record in this case, including the exhibits and testimony, and on my evaluation of the witnesses, I make the following:

FINDINGS OF FACT

I. COMMERCE FINDINGS AND UNION STATUS

Respondent is a sole proprietorship engaged in hauling materials by truck in the metropolitan Washington area, including Washington, D.C., Maryland, and Virginia, and has been so engaged for approximately 30 years. Respondent's principal place of business and its trucking terminal are located in Washington, D.C. During the relevant period Respondent furnished services valued in excess of $50,000 to areas outside the District of Columbia.

Henry Cauthorne concedes, and I find, that he is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[1] Unless specified otherwise, the principal events herein took place in late 1978 and early 1979.

[2] Respondent, at the hearing and in its brief, argues that, since the complaint as originally issued spoke only of the health and welfare fund, and since the letter from the Office of Appeals did not mention the employee pension fund, such was dismissed by the Office of Appeals and apparently by the Regional Director. However, the actual wording of the dismissal by the Office of Appeals is: "Except as to the Employer's discontinuation, in or about September 1978, of certain fringe benefit payments, the appeal is denied." The later enumeration of the health and welfare fund, quoted *supra*, is illustrative only, and not an inferential dismissal of the allegation of nonpayment to the employee pension fund. The Region's revocation of the dismissal in regard to "discontinuing certain fringe benefit payments" had removed that area from consideration by the Office of Appeals and left the Regional Director with authority to issue a complaint on the discontinuance of payments to such funds. Having such authority, the amendment at the hearing was proper, and the granting of the motion was appropriate. As then counsel for Respondent, Joel I. Keiler, admitted, Respondent was not prejudiced by the granting of that motion.

Respondent concedes, and I find, that the Union herein is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Undisputed Facts*

Henry Cauthorne has been in the business of hauling by truck in the Washington metropolitan area for approximately 30 years. In late 1971 or early 1972 Cauthorne received a subcontract for hauling work from Inter-County Construction Company, which was then working at a construction site at Connecticut Avenue and L Street, Northwest, in Washington, D.C. According to Cauthorne's testimony, the contractor told him in early 1972 that the Union said it would picket the construction site if Cauthorne did not join the Union.

Cauthorne said that without contacting any of his employees or knowing whether they supported the Union he met with the Union and signed a contract, known as the CCC contract, which was a master agreement between the Union and a number of contractors. Cauthorne also signed agreements to make contributions to the Union's health and welfare and pension funds and did so, adjusting the sums as he was told. The contract signed by Cauthorne expired around April 1975, and another contract was negotiated between the contractor's association, CCC, and the Union which was effective from August 1, 1975, through April 30, 1978. Cauthorne was not a member of CCC. Prior to the time that agreement was reached, the Union presented a one-page document to Cauthorne by which he agreed to some 11 articles as proposed by the Union in their negotiations for the new contract. This document was referred to as an interim agreement to last until agreement on the contract was reached. Cauthorne said he signed it around July 18, 1975, in order to keep working on the Inter-County job.

The General Counsel offered in evidence a document identified as the contract between Construction Contractors Council, Inc., and the Union which was to be effective from August 1, 1975, until April 30, 1978. On page 26, this document contains a tenure clause and the printed names of CCC and the Union, and has a written signature purporting to be that of Henry Cauthorne. The document is undated and not witnessed. Cauthorne denied that he had signed the document and said that the signature was not his. Although denying having signed the contract, Cauthorne admitted that he continued to make payments to the two funds through July 31, 1978, paying whatever increases were made throughout that period.

Cauthorne testified that in the summer of 1978 he told various union business agents that he was not going to sign a new union contract because he was planning to go out of business. There were some meetings between Cauthorne and a union business agent, and Cauthorne was eventually sent a copy of a new 3-year contract to run from 1978 to 1981. He did not sign the contract and made no payments to either the health and welfare fund or the pension fund for periods after July 31. In November 1978, Union President George called Cauthorne to find out whether he would sign the contract and Cauthorne again refused. On December 12, 1978, the charge herein was filed.

Cauthorne testified that he never deducted union dues from any of his employees' pay, and did not know whether any of his employees ever became union members or paid dues. A union business agent testified that on one occasion he talked to Cauthorne about some delinquent dues and indicated that Cauthorne paid the amounts for the individuals.

B. *The 1979 Meeting*

Attorney Keiler testified that he did not represent Respondent until after the unfair labor practice charge was filed and withdrew from such representation when he testified in this proceeding.

Following the original dismissal of the charge on January 10, 1979, Union President George sent a letter to Cauthorne stating that he would withdraw his appeal of the dismissal if Cauthorne would bargain with the Union. Attorney Keiler wrote George asking the Union for proof of majority status and for a proposed contract. On January 23, the Union filed its appeal of the dismissal and wrote a letter to Attorney Keiler stating that the proof of majority status had been given to the National Labor Relations Board. No proposed union contract was submitted to Keiler or to Respondent.

Attorney Keiler met with Union Business Agent Warren on January 30. According to Keiler, Warren said that he did not have a copy of the new Capital Area Truckers Association contract. Keiler testified that he said he was familiar with it and asked if there could be any changes made in that contract. To Warren's negative reply, Keiler said that that meant the first offer was the last offer. When Warren said yes, Keiler said that Respondent was not going to sign the contract and they were at an impasse. Warren asked what changes Respondent wanted in the contract and Keiler said they did not want any health and welfare or pension funds and that he was unhappy with the checkoff and the union-security clauses. Warren said they were wasting their time and Keiler left.

In rebuttal,[3] Warren testified that he asked Attorney Keiler for the Company's position and Keiler gave him a

[3] Respondent objected to Warren's testifying, stating that Warren had been in the hearing room during the testimony of some witnesses and that this breached the sequestration order, and in its brief stated, "Warren had been sequestered on January 7, 1980 and was even present in the courtroom when the sequestration rule was made. Therefore his presence in the courtroom on February 11, 1980 while a witness was testifying was a blatant flouting of the Judge's order. To add insult to injury, after he was removed on February 11, 1980, he sat in a room where he could hear other witnesses testifying. Therefore, his testimony should not have been received."

When this objection was made during the hearing, it was noted on the record that Warren had been in the room during the testimony of an expert witness concerning Cauthorne's purported signature on G.C. Exh. 11 and that Warren was removed to the witness room within 1 or 2 minutes. In his testimony concerning this issue, Warren said that he could hear a few words but that he heard none of Attorney Keiler's testimony. Warren testified only to rebut Keiler's testimony.

The purposes of sequestration were not violated since Warren's testimony dealt solely with his meeting with Attorney Keiler. There is no evidence whatsoever that Warren was in a position where he could hear

Continued

number of items to which the Company was opposed. Warren said that he made notes but the parties appeared to be far apart. He said he asked Keiler for a list of employees and their salaries and that the meeting adjourned with Keiler agreeing to give him that information. He further testified that he never received that information and Keiler in a later letter said that the information had not been requested.

C. *The 1975 Contract*

The General Counsel's Exhibit 11 is a copy of the 1975 CCC contract with the purported signature of Henry Cauthorne on the signatory page. As noted above, this is the only written thing on that page. No evidence was produced that anyone had ever seen Cauthorne sign the document. Since Cauthorne denied signing it and I refused to consider myelf an expert in authenticating documents, both parties produced expert witnesses.

The General Counsel's witness was James Mathis, who is a special agent for the Federal Bureau of Investigation assigned to the FBI laboratory as an examiner of questioned documents. Mathis testified that he underwent a 2-year training course in the FBI in this regard and had testified on several occasions and had worked under others who had testified concerning questioned documents. From Mathis' study of the document compared to known samples of Cauthorne's signature, he testified to some similarities and some irregularities and concluded that he could not say whether or not the purported signature was genuine.

Respondent's expert witness was James Miller, who is the chief of the Questioned Document Laboratory for the Metropolitan Police Department in Washington, D.C., and whose experience in forensic programs began in 1951 with some 25 to 26 years in the questioned document area. Miller's background in this field is extensive.

In a most detailed analysis of the purported signature as compared with more than 130 known signatures of Cauthorne, Miller stated that, in his opinion, the purported signature was an attempt to copy a genuine signature and was clearly a forgery. His analysis of the many items he observed in reaching his conclusion left no doubt that the signature was not genuine, and I so find and conclude.

Without a contract existing between the Union and the Company from 1975 to 1979, there would appear to be no binding obligation on Respondent to continue to make payments to the Union's health and welfare fund and pension fund after 1975, since the obligation to do so arose only under the 1975–1978 contract.

If there was any failure on the part of Respondent or any violation of Section 8(a)(5) in refusing to bargain, it must have taken place in 1975 when Respondent did not sign the contract insofar as the record establishes. The fact that Respondent voluntarily paid money into the two funds until 1978 is not the same thing as being under a contractual obligation to do so. The Union has not urged that it was deceived by the payments to the funds or by the purported signature of Cauthorne on the document. Therefore, there was no obligation on Respondent's part to pay into the funds after July 31, 1978, and prior to that time as well.

The General Counsel argues alternatively that Respondent, without consultation or negotiation with the Union, unilaterally terminated a condition of employment by ceasing to make payments to the funds and that such violated Section 8(a)(5) and (1) of the Act even though Respondent had unilaterally continued those conditions while not obligated to do so. The short answer to this thesis is that, since Respondent had no obligation to continue those conditions of employment but did so unilaterally, it therefore had no obligation either to consult or negotiate with the Union and could make such unilateral changes as it wished, including stopping payment to these two funds.

Under the circumstances of having an 8(a)(5) and (1) charge filed against his client, I do not find that Attorney Keiler's meeting with Union Business Agent Warren, under the terms that Keiler set forth in his letters to the Union, was an implicit recognition that Respondent was under an obligation to bargain with the Union. This meeting appears to have been in the nature of an exploratory meeting with Respondent trying to establish that it could not negotiate on the terms it sought with the Union and would have to come to an impasse.

The allegations of violations of Section 8(a)(1) and (5) in this case must be dismissed since, if there was a refusal to bargain by Respondent, it occurred sometime in 1975 when Respondent did not sign the 1975 CCC contract, and not in 1978 as alleged in this complaint.

[Recommended Order for dismissal omitted from publication.]

---

the testimony of other witnesses or that he heard the testimony of Keiler. In fact, the testimony is just the opposite. Therefore Respondent's objections are groundless.